App. F. IX-4

Previous References

1931.32
(Law)

File No. 51-31

Serial Nos. 1—4

Later References

(23)

General and Revenue Secretariat.

Serial Nos. Four

Part B for November 1931

SUBJECT.

Notice under Sec. 80 C. P. C from Mr. M. Lakshmanarayanappa, Advocate Bl'one on behalf of Mr. K. Subramani Iyer Claiming certain amount in respect of a Contract for Strengthening the bunds of the Somambhudi Agrahara Tank in Sagatoor Hobli Kolar Taluk undertook by him with P. W. D.

---

4) To The Chief Engineer

No. P3001 of 28/11/31

Returns the records with a copy of the reply sent by the Govt. Advocate to the notice.

M. Abdul Aziz
2. XII. 31

G. R. S. APP F. III—1] 1931

GENERAL AND REVENUE SECRETARIAT.

(Law)

NOTES.

File No. 51-31

FILE HEADING.

Notice under Sec 80 C.P.C

FROM M. Lakshmanarayanappa Advocate B'lore

No.	Dated 19.9	Received 21.9.31
Diary No. 1367	Enclos. Spare copies	Serial No. 1

BRIEF ABSTRACT OF LETTER.

Issue notice on behalf of Subramanya Pai claiming certain amount in respect of a Contract for supplying the hands of the sanctioned Agraharas in Hosakote Taluk undertook by him P. in D.

NOTES AND ORDERS

Dft. Calling for a Report from the Ch. Engr Supdg for appt.

may be appd

Gen Secy)

GENERAL SECRETARY
22 SEP. 1931
No. 497

15D 22/9

Issue

22/9

Notes Sheet.

TYPING SECTION
22 SEP. 1931
P.M.
GENL. & REV. SECTT.

WD 01683—GPB—5,000—3-5-29

Issue

22/9

Secy. A for week

Dmd No. P. 1770 dt 22.9.31

Serial No.

From The Chief Engineer Mysore

4292 o .6.co.31.

forwards his office file of correspondence on the subject together with an office note on the case

Submitted

9/10 In the notice given by Mr Hirde Lakshminarayanappa, four claims are put forward on behalf of his client one K. Subramanya Iyer. — Viz —

1) Rs 1597-1-3. for alleged hire of Rollers supplied by the Dept

2) Rs 650-0-0 for filling up worn Sals which have been done by municipal Workmen

3) Rs 504-11-0 construction of a temporary bund

4) Rs 800 for hire of Rollers by Dept.

Items 2 & 3 are 2 clr

& the Chief Engr's report clearly negatives the claims —

Item 1 & 4 are based on an allegation by the contractor that he offered to do earth work at 0.7.0 a c.yd on the distinct understanding that he had to be supplied

free of hire all trolleys & trolley materials required for the work - The contractor relies on a Mutchalika executed by him on 30-7-28 (Hay V) but as stated by the Chief Engr, I do not think that the terms of Mutchalika can help him much. The contractor ~~was~~ urges that no mention of payment of hire etc was made in the Mutchalika because of the alleged agreement. But it may equally be contended against him that in the absence of any express stipulation, the rules ought to govern the case in which case according to the Ch Engr the Contractor has to pay hire for supply of tools & plant--

V

The Mutchalika however read with the Executive Engineer's letter of 23rd Nov 1928 (Hay R) shows that the Department had to supply all the trolleys & trolley materials required for the work and ~~to~~ in spite of the Executive Engineer's letter of 12th April 1929, the Superintending Engineer's letter of 12th May 1931 says clearly that 'the then Executive Engineer believes that it was understood that the trolley materials

'R'

Hay Q 'B'

Serial No.

(3)

The Contractor, according to this letter, was agreeable to take up the work at 6 Annas a Cubic Yard provided the whole work was entrusted to him, but that as no such assurance could then be given fresh terms were called for from the contractor for the maintenance portion of the estimate, and among the terms he proposed for this work he wanted trolley materials to be supplied which he would convey and erect at his own cost. Even here it is not suggested that they should be supplied free. These circumstances negative this claim also and the Contractor is not therefore entitled to the amount he claims.

Government Advocate.
11-11-1931.

The threatened suit may be awaited. If appd. the Govt Advocate will be requested to send a reply to the notice issued under Sec 80 C.P.C by Mr. Nihal N. Karunaratne (Proctor)

I Member

13/11

16-11-

16/11

8/11/31

GENERAL SECRETARY 13 NOV. 1931 No. 3288

OFFICE OF THE EXECUTIVE COUNCIL 17 NOV. 1931 No. 2811

NOTE—Contn. Sheet

WD 02553—50,000—GPB—8-7 30

1515

File No. of 193

General and Revenue Secretariat

U.O. No. P S Z J 31 dated 18th Nov. 1931.
Forwarded with compliments to the Govt Advocate for favour of sending a reply to the notice.

Bd.
Boopathi Rao
For Secy to Govt
18/11/31

---mued with Compts with a copy of the reply sent to Mr: Kirle V. Lakshminarayanappa

Bhagavan Jr
Govt. Adv.
25.11.31

G.O. No. 66/31.M dt 25.11.31.

GOVT. ADVOCATE'S OFFICE 15 NOV. 1931 BANGALORE

GENERAL SECRETARY 25 NOV. 1931 No

~~Copy~~ Draft returning the records to the Ch Engr - A Copy of reply ~~sent~~ given to the Advocate's notice may also be sent to the Ch Engr for information ---

BNP
25/11

Dft put up accordingly

15D 26/11 - For perusal before issue

Secy)

BNP 26/11

26/11

Issue.
BNP
26/11

GENERAL SECRETARY 26 NOV. 1931 No

GENERAL & REVENUE SECRETARIAT

[App. F. III—2

General and Revenue Secretariat | Law File No. 51 of 1931.

Serial No.	
	To
	The Ch. Engineer
	No. P. 3001 dated 28.11.31 returning the records with a copy of the reply sent by the Govt to the notice
B. 1/15/31	
	[illegible]

NOTE—Contn. Sheet.

WD 70—GBPM—60,000—13-8-31

Laws

Law 51-31...

To

The Chief Secretary

to the Government of Mysore,

Bangalore.

From :-

Mr. Mirle N. LakshmiNaranappa, B.A.,LL.B.,

Advocate,

Chickpet,

Bangalore City.

Sir,

On behalf of my client Mr. K. Subramani Iyer, son of K. Naranappa, residing at Kolar and under his instructions I inform you as follows : - -

(1). That my Client undertook the work of strengthening the bund of the Somambhudi Agrahara Tank in Sugatoor, Hobli, Kolar Taluk in July 1928 as per terms agreed upon between him and the Public Works Department through the concerned Officer, that at the time of final settlement of the bill which had to take place and payment made that is on 27-6-31 the department deducted out of the amount earnt by my client for work done a sum of

(a) Rs 1591-1-3 for the alleged hire of the trolley supposed to be due from my Client to the Government.

(b) Rs 650/- for filling up 1392½ cubic yards at 0-8-0 per yard which piece of work was said to have been done by one Mr. Chinnadorai Mudaliar and not by my client.

Regarding item (a) mentioned above I am

2

instructed to state that the trolley materials were all transported from Kolar to the place of work and back at my client's cost and that the materials were intended to be made use of free of charge and not for hire. It is this understanding regarding the free use of trolleys that accounts for the low rate assigned to the work in question as compared for instance with what was given to Mr. C.Venkatesiya for the Amanikere tank work in 1929 at 1-14-0 per cubic yard.

As regards item (b) mentioned above, the filling up of the scourings by Mr. Chinnadorai Modaliyar had nothing to do with the contract work undertaken by my client.

It will thus be seen that no deduction for any of the reasons mentioned can be made out of the amounts due to my client. There are two items regarding which my clients' claim are not accepted by the Government Viz.,

(a). Work regarding the Construction of a temporary bund

(b) failure to supply trolleys in sufficient number to transport the earth in the time ~~allotted~~. present

Regarding item (a) mentioned above earth work of gravelly soil, 1615, cubic yards at 0-5-0 a yard was done . In this behalf my client is entitled to Rs 504-11-0 as the earth had to be re-shifted, regarding item (b) according to the term in ~~this~~ IL agreement, my Client was entitled to an

-adequage

Mirle. N. Lakshmanappa Adv. 19-9-31.

adequate supply of trolleys for the transportation of the earth and to complete the work in time. The Department were able to supply only 9 trolleys and them too of a kind not quite fit for use. My Client had to supplement the number by a purchase of 12 more capable of good service at a cost of Rs 1200/- After the work was finished, he could sell them only for Rs 400/-. On this account he lost Rs 800/- and this loss he had to incur as a direct result of failure on the part of the Department to provide him with an adequate supply of the trolleys as agreed upon.

L a s t l y, my Client is entitled to interest by way of damages at 12 % per annum on the sums mentioned above from the due date 27-6-31 i .e., the date when the final settlement had to be made till the date of payment.

I am instructed by my Client to give you this notice under Section80 of the Civil Procedure Code that the Government are not entitled to make any deduction out of the amounts due by them to my Client either for the hire of the trolleys or for the work said to have been done by one Chinna dorai Modaliar in respect of the filling up of the scourings and that the Government are bound to pay my client a sum of Rs 504-11-0 in respect of the construction of the temporary bund and a sum of Rs 800/- for the loss on the sale of the trolleys purchased by him; that the Government should pay my Client sums noted against each of the four items mentioned above together with interest as aforesaid

- within two months

5

Appendix F G—1

SUBJECT .....

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Section Leases

File No. 51-31

Serial No. 2

Diary No. of letter replied to .....

No 1770 (1)

To The Chief Engineer
P W D

General and Revenue Secretariat

( )

the *193*

Sir,

I am directed

Date of issue 24/9/31

to forward herewith a copy of

the notice under sec 80 C.P.C. from

Signed by M. C.S.B.

Mr. Mirle V. Lakshminarayappa

Advocate, on behalf of Mr. V.

Subramani Iyer, Kolar, claiming

certain Amount due to him

in respect of the Contract of for

strengthening the bund of the

List of enclosures .....

Soundubhundi

~~Sawandbundi~~ Agrahara Tank, in

Sugatoor

~~Sugatoor~~ Hobli, Kolar Taluk, and

Copied by .....

to request that a report together

with the Connected records may

Examined by .....

kindly be sent for information

7

23rd September 19

The

The Chief Engineer of Mysore,
Public Works Department.

I am directed to
notice under Section 80 ~~Original~~ Civil
Mirle N. Lakshminaranappa, Advocate. on Behalf of ~~the~~ Mr.V. Subramani Iyer, Kolar, claiming certain amount due to him in respect of the contract for strengthening the bund of the Somambhudi Agrahara Tank in Sugatoor Hobli. Kolar Taluk and to request that a report together with the connected records may kindly be sent for information of Government within 2 weeks from this date.

I have the honor to be,
Sir,
Your most obedient servant.

General Secretary to Government.

S.R.-2

IMMEDIATE.

No. 4292

encls- 1 note
3 letters ppls

Law 51-31-3 8

MYSORE PUBLIC WORKS DEPARTMENT,
CENTRAL OFFICE,

Dated Bangalore, 6th October 1931.

15737/31
P

FROM

M.C.Rangaiya,Esq.,B.A.,B.E.,M.R.San.I.,M.Am.A.E.,
Chief Engineer of Mysore,
Bangalore.

To

The Secretary to Government,

General Department.

Bangalore.

SIR,

Subject:- Strengthening the bund of Somambudhi Agrahara tank in the Kolar Taluk.

With reference to your letter No.D.1770/Law.51-31-2 dated the 24th September 1931, forwarding a copy of the notice from Mr.Mirle N.Lakshminaranappa, Advocate, on behalf of Mr.K.Subrahmanya Iyer in respect of amounts due to him for carrying out the work of strengthening the bund of Somambudhi Agrahara tank, I have the honour to forward herewith for information and return this office file of correspondence on the subject, together with an office note on the case.

I have the honour to be,

Sir,

Your most obedient servant,

M C Rangaiya
6/10/31

Chief Engineer of Mysore.

G.S.W.S. GENERAL SECRETARY
7 OCT. 1931
No. Law

7.10.31

A note on the claims of Mr.K.Subrahmanya Iyer, contractor, for strengthening the bund of the Somambudhi Agrahar tank in the Kolar Taluk.

An estimate for Rs 25,220 was sanctioned for the above work in October 1929 and the work was given to Mr.K.Subrahmanya Iyer at sanctioned estimate rates. The work is since completed. Before the final bill was prepared and paid to the contractor, the latter presented a petition

(Slip I) praying for-

(1) the waiving of hire charges for supplying trolley materials by Government;

(2) non-deducting in the earthwork quantity billed for to him, for the quantity of earthwork done by the previous contractor;

(3) payment on the temporary bund work done to convey earth to bund; and

(4) 12½ per cent ~~in~~ extra in quantity of earthwork for settlement of earthwork.

2. His reasons for the above claims and the manner of their ~~original~~ disposal are noted below:-

(1) Waiving the hire charges for supplying trolley materials.- He states that he had executed a mutchalika to the effect that the above materials should be supplied to him free of hire charges. This is not true; for, in the mutchalika referred to. (Slip Y) the terms are only these:-

(a) that he agrees to do earthwork at 0-7-0 a cyd. and that the rate includes the charges for

conveying the trolley materials from Kolar to workspot and for bringing the back to Kolar;

(b) that he agrees to do the strengthening of the bund at 0-6-0 a cyd; and

(c) that sleepers and nails required for laying out trolley lines will be paid by the contractor in the first instance and then paid to him in subsequent bills.

It will be seen from the above that there is no specific mention that the trolleys are to be given to him free of hire charges.

(Slip G) In letter No.364 dated the 12th April 1929, the then Executive Engineer, Kolar Division, has clearly stated that he (the contractor) agreed to pay the usual hire charges on the materials.

Under Codal rules, the recovery of hire charges at 15 per cent on all Tools and plant, lent to contractors is compulsory. The contractor who is a long-standing man in the Department cannot deny a knowledge of the rules of hire prevailing in the Department. The agreement entered into with the contractor is called for from the Executive Engineer and will be forwarded on receipt.

(2) Deduction in earthwork from his bill.- The contractor says that some earthwork to the bund at scoured places had been done by one Mr.Chinnadorai Mudaliar in the year 1927 by excavating pits at the rear toe of the bund and this quantity of (1392½ cyds) has now been deducted from the quantity billed for, to the present contractor

according to sectional measurements of the bund. The sectional measurements given to the present contractor evidently include the quantity of earth work done to the bund by the previous contractor and there is no justification for waiving this deduction as it cannot be proved that the quantity of work done by the previous man was all washed away.

(3) Payment for temporary bund erected.- The contractor says that a temporary bund involving 1615 cyds of earthwork consisting of fine gravel was put as per orders to convey the earth to bund and this bund was removed and the earth used to the tank bund and a rate of only 0-6-0 is paid omitting the rate for having originally put up the temporary bund and that the temporary bund has actually cost him at the rate of 0-5-0 a cyd.

The Superintending Engineer has not recommended this claim. The bund was probably put up by the contractor for facilitating the carriage of gravel. He is not therefore entitled to be paid anything for it.

(4) 12½ per cent extra in quantity of earth work for settlement of earthwork.- Against the 12½ per cent claimed by him Government have allowed 10 per cent extra to the earthwork computed on sectional measurements.

3. In his present notice to Government, the contractor has mentioned a new claim, ie. for the payment of the loss of Rs 800 sustained by him in the sale of the materials, purchased by him. Government were not bound to supply him all the trolley material necessary for the work nor did they promise to pay to him on account of loss consequent on the sale of the materials purchased by him.

It may be mentioned here that a concession in rates for earthwork resulting in an extra payment of Rs 2,202 was sanctioned by Chief Engineer in March 1930 in view of certain long leads and high lifts for earth in a few grades ~~and high lifts for earth in a few grades~~ of the ~~ground~~ bund, though the contractor was bound by the agreement to do all the work at the original approved rates only.

(Slip R)

V. Lakshmanachar
Personal Asst
6.10.31

To The Chief Engineer of Mysore.

Bangalore,

October 1931.

V.N.S.

/3

BY REGISTERED POST.
ACKNOWLEDGMENT DUE.

Do. No. 370/m.m

20th November 31.

From

A.R. Nagesvara Iyer, Esq., B.A., B.L.,
Government Advocate in Mysore,
BANGALORE.

To

Mirle N. Lakshminaranappa, Esq., B.A.,LL.B.,
A d v o c a t e,
Chickpet, BANGALORE CITY.

Dear Sir,

I am instructed by the Chief Secretary to Government, to acknowledge receipt of your notice, dated 19-9-1931. issued by you on behalf of your client Mr. K. Subrahmani Iyer of Kolar, and to reply to it as follows :-

That your client is not entitled to the amounts claimed by him in the notice, and that the allegations made by your client on the basis of which those claims are made are not true. The Trolley materials referred to by you were not supplied free as alleged, and your client was therefore bound to pay the hire - charges.

That your client's allegations regarding the claim of Rs.650/- in connection with the alleged filling up of Scourings and his claim regarding the costs of temporary bund are not true, and that your client is not entitled to the same.

With respect to the last item of your client's claim, the Department did not undertake to supply all the trolley - materials required by your client and this claim is not also - sustainable. Your client is not therefore entitled to the - amounts referred to above or to the interest claimed.

Please

14

Please communicate this to your client and inform him that if he is ill-advised to go to a court of law, he will have to pay costs to the Government.

Yours faithfully,

"Copy"

Government Advocate.

CSH/1.

15

Appendix F G—1]

SUBJECT .....

.....

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Section Loans

File No. 51-31

Serial No. 4

Diary No. of letter replied to .....

No. 3001 (Over Leaves)

To The Chief Engineer.

Sir,

General and Revenue Secretaria

( )

the *193*

I am directed to return herewith the entire file of records sent with your letter no. 4292 dated 6th Oct 1931 re: the notice from Mr. Mirle Lakshminarayanappa, Advocate on behalf of Mr. K. Subramanyaiya in respect of certain amounts due to him for Carrying out the work of Strengthening the bund of Samanabathi Agrahara Tank in the Kolar Taluk.

Date of issue 28/11/31

Signed by

List of enclosures .....

Copied by .....

A copy of the reply sent by the Govt Advocate ~~reply~~ to the notice is also enclosed for your information & reference.

Examined by .....

I have etc

WD 71—GBPM—40,000—20-7-31.

28/11

SD 28/11

for Govt

DO reply for Govt see Y